

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

UNITED STATES OF AMERICA

v.

JAMES RAY YOAKUM, *et. al.*,

Defendants.

CR No. 09-336-HA

**ORDER DECLARING CASE
COMPLEX, VACATING DATES,
SETTING STATUS HEARING, AND
EXCLUDING TIME UNDER THE
SPEEDY TRIAL ACT**

This matter is before the Court on the government's motion to: 1) designate this a complex case; 2) vacate the current discovery, motions, and trial dates; 3) set a status conference, at which time new dates may be set; and 4) exclude time under the Speedy Trial Act, from the filing of the government's motion through and including the status hearing, pursuant to Title 18, United States Code, Sections 3161(h)(1)(D), 3161(h)(3)(A), 3161(h)(7), 3161(h)(7)(A), and considering the factors set forth in Section 3161(h)(7)(B)(i), (ii), and (iv).

FINDINGS OF FACT AND CONCLUSIONS OF LAW BACKGROUND

The defendants are charged in an 18-count indictment alleging various controlled substances violations. The main charge in the case, Count One, alleges that all the defendants jointly engaged in a criminal conspiracy to distribute and possess with the intent to distribute 5 kilograms of cocaine and 50 grams or more of cocaine base, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A) and 846. The charge carries a mandatory minimum sentence of 10 years. The conspiracy is alleged to run from no later than 2006 and to have continued through August 31, 2009. The case against the defendants is primarily based upon intercepted calls derived from two wiretaps on defendant Yoakum's phones, controlled purchases of both cocaine

and crack cocaine from various defendant's, surveillance, and a variety of witnesses to the defendants' illegal activities. The government has produced over 10,000 pages of initial discovery and thousands of intercepted phone calls. Additionally approximately 7,900 pages of financial documents are currently in the process of being provided as discovery. The scope of the conspiracy includes acts in both California and Oregon. The government estimates that the trial will last two weeks. Trial is currently set for December 15, 2009. Other defendants and charges may be added.

COMPLEXITY

As seen above, these cases currently involve eight defendants and serious felony offenses, with substantial penalties. The charges span more than a three-year period and involve acts in Oregon and California. Additional charges and defendants may be added in another superseding indictment.

The cases are based in part on two court-authorized wiretaps, and extensions thereof. The underlying applications, affidavits, and orders are voluminous, as are the "line sheets" summarizing intercepted calls and transcripts. Reports, photographs, transcripts and line sheets which have been provided to defendants, total over 10,000 pages. Additional discovery, including financial documents and search warrant affidavits are still forthcoming. It will take time to produce all of the discovery in the case. Some of the discovery is also still under seal.

Given the numbers of defendants, the nature of the charges, and the volume and scope of discovery involved, the case is "complex" within the meaning of the Speedy Trial Act, and that additional time is needed for discovery, pretrial motions, and trial preparation.

STATUS CONFERENCE

Based on the above a number of the parties have requested that the Court to vacate all dates set in the cases. The same parties request the Court to schedule a status conference in the cases at which time the parties may better estimate the time needed to properly prepare for pretrial motions and trial.

EXCLUDABLE TIME

Title 18, United States Code, Section 3161(h)(1)(D) provides for the exclusion of time under the Speedy Trial Act whenever a motion is filed, through the conclusion of any hearing on the motion or other prompt disposition thereof. Section 3161(h)(3)(A) provides for exclusion of time under the Speedy Trial Act when a defendant is absent or unavailable, as in the case of the fugitive defendants. Section 3161(h)(7)(A) provides for the exclusion of time under the Speedy Trial Act inasmuch as the Court finds that the ends of justice served by the continuance outweigh the best interest of the public and the defendants in a speedy trial, taking into account the factors set forth in Section 3161(h)(7)(B)(i), (ii), and (iv).

Here, the Court finds that a failure to grant the requested continuance would likely result in a miscarriage of justice or render the proceedings impossible to continue. The Court also agrees that the case is complex within the meaning of Section 3161(h)(7)(B)(ii), due to the number of defendants, the nature of the prosecutions, and the likely existence of novel issues of law or fact, and that it would be unreasonable to expect adequate preparation for pretrial proceedings or the trial itself within the usual time limits established under the Speedy Trial Act. The Court further finds that even if the case were not so unusual or complex to fall within clause (ii) under Section 3161(h)(7)(B), in that a denial of the request for continuance would deny

counsel for all parties the reasonable time necessary for effective preparation, taking into account the exercise of due diligence, under Section 3161(h)(7)(B)(iv).

ORDER

For the foregoing reasons, the government's motion is hereby GRANTED. All dates previously set in this case are hereby vacated, and this matter is continued until _____, at which time the Court will conduct a status conference and set new dates in the case.

IT IS FURTHER ORDERED that the period of time from the filing of the government's motion through and including the status conference shall be excluded from the computation of time within which the trial must commence under the Speedy Trial Act, pursuant to Title 18, United States Code, Sections, 3161(h)(3)(A) and 3161(h)(7), considering the factors set forth in Section 3161(h)(8)(B)(i), (ii), and (iv), as discussed above.

DATED this ____ day of December 2009.

HONORABLE ANCER L. HAGGERTY
UNITED STATES DISTRICT JUDGE

Submitted by:

KENT S. ROBINSON
Acting United States Attorney

/s/ Scott Kerin
SCOTT M. KERIN
JANE H. SHOEMAKER
Assistant United States Attorneys